IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 36 OF 2006

Shri Aveline J. Pinto,
Major of age, H.No.10/7,
Behind Jerry Ciffin,
Opp. Asilo Hospital,
Mapusa-Goa. ... Petitioner

versus

State of Goa through
CID Police or Public
Prosecutor at Panaji. ... Respondent

Mr. Nigel Costa Frias, Advocate under the Legal Aid Scheme for the Petitioner.

Ms. Winnie Coutinho, Public Prosecutor for the State/Respondent.

CORAM : N. A. BRITTO, J.

DATE : 7TH FEBRUARY, 2007.

ORAL ORDER

The accused has been ordered to be charged under

Sections 376, 506(II) I.P.C. by Order dated 20-7-2006 of the learned Additional Sessions Judge, Panaji.

2. This petition can be treated as a revision filed by the accused against the said Order.

3. The case of the prosecution is that somewhere in October, 2002, the accused induced the minor victim, aged about 12 years, to come to his residence on the pretext of providing her work and raped her at that place on several occasions, under threats to kill her. The learned Additional Sessions Judge after considering the statements of the said victim and other children as well as that of the mother and the medical report of Dr. Rodrigues, in relation to the said victim as well as the accused, has come to the conclusion that there is a prima facie case against the accused and therefore has ordered framing of charge under the said Sections.

4. The learned Counsel on behalf of the accused submits that in case the incident took place as narrated by the victim in

her complaint dated 15-10-2003 then the victim would not have waited for one year to report such a traumatic incident to her mother or to the Police. The learned Counsel further submits that in case the incident at all had taken place, the victim would have at least remembered the month in which the same had taken place and in case the victim was threatened, it is difficult to believe that the victim would have gone to the accused again because he had threatened to kill her as stated by her in her said complaint.

5. On the other hand, the learned Public Prosecutor Ms. Winnie Coutinho on behalf of the respondent submits that the statements recorded of the victim as well as of her mother and other witnesses who were present when the victim was taken in by the accused, disclose a prima facie case to try the accused for the commission of the said offences. The learned Public Prosecutor further submits that the facts stated by the victim in her complaint ought not to be disbelieved at this stage.

6. Admittedly, the complaint in this case came to be lodged a year later after the incident only after the intervention

of some N.G.O. Delay is a matter which the prosecution would certainly be expected to explain but only because there has been delay one need not jump to the conclusion that the complaint is a false complaint. The settled principle of law is that the delay cannot be used as a ritualistic formula for doubting prosecution case and discarding the same solely on that ground. Delay has the effect of putting the Court on its guard to search for any plausible explanation, and if offered whether it is satisfactory or not. The veracity of the facts stated in the complaint cannot be gone into at this stage and the same could be gone into only at the stage of trial. In this context, reliance placed on the case of **Vimal Suresh Kamble** v. **Chaluverapinake Apal S. P. and another**(AIR 2003 SC 818) on behalf of the accused will be of no assistance to the case of the accused. I have perused the complaint of the victim, the statements of her mother and those of other children who had gone along with the victim. As rightly pointed out by the learned Additional Sessions Judge, the said complaint of the victim shows that the accused told her, when she was in the municipal market, to come to his house near Asilo Hospital along with Shaaru and others and that the accused gave them "bhaji" and "pao" to eat and then took the victim in the

room and on being questioned by the victim, the accused gave a slap and threatened to kill her with a knife and thereafter removed her clothes and committed rape upon her. The medical report prepared a year later does not prima facie falsify the case made out by the said victim. The parameters required to be applied at the stage of framing of charge are now well settled with several decisions of the Apex Court. As stated in the case of **Niranjan Singh Karam Singh** v. **Jitendra Bhimraj Bijjayya** (AIR 1990 SC 1962), at the stage of framing of charge the inquiry must necessarily be limited to decide if the facts emerging from such materials constitute the offence with which the accused could be charged. The Court will peruse the records for that limited purpose, but it is not required to marshal with a view to decide the reliability thereof. In other words, the probative value of the statements made in the complaint may not be gone into at the stage of framing of charge. As far as the delay is concerned, in filing the complaint against the accused, the same could be explained by the prosecution at the trial and the delay at the most may affect the credibility of the said complaint, which cannot be gone into at this stage but it is a matter of appreciation of evidence. In my view, considering the

material placed by the prosecution there was a prima facie case made out for framing of charge against the accused under Sections 376 and 506(II) I.P.C. The conclusion arrived at by the learned Additional Sessions Judge cannot be faulted.

7. There is no merit in this petition. Hence, the same is hereby dismissed.

N. A. BRITTO, J.

RD